

Exhibit #3

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,)
)
Plaintiffs,)
)
vs.)
)
THE CORPORATION OF THE PRESIDENT)
OF THE CHURCH OF JESUS CHRIST OF) No. 4-2338 RSM
LATTER-DAY SAINTS, a Utah)
corporation sole, a/k/a "MORMON ")
CHURCH"; LDS SOCIAL SERVICES a/k/a)
LDS FAMILY SERVICES, a Utah)
corporation,)
)
Defendants.)

DEPOSITION OF PHILIP J. COLEMAN

September 15, 2005

Seattle, Washington

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MR. KOSNOFF		4
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1 BE IT REMEMBERED that on Thursday,
2 September 15, 2005, at 600 University Street, Suite
3 2300, Seattle, Washington, at 9:16 a.m., before
4 TERILYNN PRITCHARD, CCR, RPR, Notary Public in and
5 for the State of Washington, appeared PHILIP J.
6 COLEMAN, the witness herein;
7 WHEREUPON, the following
8 proceedings were had, to wit:
9

<<<<>>>>

10 12 PHILIP J. COLEMAN, having been first duly sworn
11 13 by the Notary, deposed and
14 15 testified as follows:

16 EXAMINATION
17 BY MR. KOSNOFF:

18 Q Good morning, Dr. Coleman. My name is Tim Kosnoff.
19 How are you this morning?
20 A I'm very well. How are you?
21 Q Good. Thank you.
22 Dr. Coleman, we met just briefly before we got
23 started, but I wanted to introduce myself. I, as I'm
24 sure you know by now, am one of the attorneys for the
25 plaintiffs in this case entitled Fleming versus the

1 (Pages 1 to 4)

Philip J. Coleman
September 15, 2005

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1 A I can't infer the second from the earlier, but that
2 was a statement of fact of the position.
3 Q Okay.
4 A I don't recall how well Jack was doing or why he was
5 put in the position.
6 Q He was already in that position when you became
7 bishop?
8 A I don't recall that either.
9 Q At some point during the three years that you were
10 bishop, did someone bring to your attention an
11 allegation that Jack LoHolt was sexually molesting
12 boys?
13 A In the specific, I have to say no to sexually
14 molesting.
15 Q What about generally?
16 A In the general to sexually molesting, I have to say
17 no.
18 Q Did you receive any information of any kind from any
19 person that Jack LoHolt was allegedly engaging in
20 sexually inappropriate activity?
21 A Yes.
22 Q From who whom did you learn that?
23 MR. FREY: I am going to object at this
24 point in time.
25 Let me tell you the basis for the objection.

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1 From your comments I take that you are making an
2 objection based upon a number of criteria. One, I
3 think I heard an assertion of the clergy penitent
4 privilege.
5 MR. FREY: I'll make it simple for you.
6 I'll tell you what the basis for my objection is:
7 one, it's a constitutional objection on the free
8 exercise clause; number two, it may also be on the
9 basis of the priest penitent privilege depending on
10 the circumstances under which he may have heard
11 something; and the third ground is that we've said in
12 our answers to interrogatories I'm not prepared to
13 reveal the names of anybody or have my client reveal
14 the names of anyone who has been molested without
15 that person's consent because I know for a fact, and
16 I've gotten court orders on this, that it can be
17 devastating to have someone knock on their door and
18 say, "I understand you've been abused and I'd like to
19 talk to you about it."
20 For those three reasons-- I am willing to go
21 forward because I know that you have the right to
22 determine knowledge and what they knew and should
23 have known, and I'm willing to let him tell you in a
24 general fashion, and I guess I could proffer this for
25 the record what he can tell you to get you to where

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1 He was a bishop at the time, and we treat those
2 communications as confidential, and in trying to help
3 you with this answer, I'm not trying to present a
4 roadblock.
5 As an accommodation and because of the fact that
6 the individuals involved have not authorized this
7 information to be given, I think they have a right to
8 privacy in that regard and a right to have it
9 protected.
10 As an accommodation, I'll allow the witness to
11 tell you in a general sense what he heard had
12 happened, and I'm not waiving any privilege by doing
13 that.
14 If you'll accept that, we can go forward.
15 You don't have to accept my objection, but if you
16 want to go forward, I'm willing to do that on this
17 basis.
18 MR. KOSNOFF: Tom, I would like to take
19 a brief bathroom break and come back and continue
20 this dialogue on that point.
21 (Recess 10:27 to 10:33 a.m.)
22
23 MR. KOSNOFF: Mr. Frey, this is not
24 unfamiliar ground to the two of us, this point.
25 We've been at similar points in other cases.

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1 you need to go--
2 MR. KOSNOFF: Before we go there, I
3 think this is important that we establish enough of a
4 factual record here for Judge Martinez so we only
5 have to take one trip up and bring Dr. Coleman back
6 one more time as opposed to two more times, so I
7 would propose that with respect to the assertion of
8 the claimed privileges that you're making, that you
9 take a moment and establish whatever factual basis
10 you would like with Dr. Coleman to support the
11 assertion of those privileges.
12 I'm inviting you to do that because, as you know,
13 it's the proponent of the privilege that carries the
14 burden of establishing it, and I just want to make
15 sure that when this goes up to Judge Martinez, that
16 you've had a full opportunity to make as full an
17 evidentiary record as you need to make your arguments
18 to him.
19 MR. FREY: It's not my burden. Under
20 the rule I'm exercising those privileges, and I've
21 enumerated them.
22 If you wish to question the witness, you are free
23 to do that. If you choose to go to Judge Martinez,
24 I'll be happy to supply whatever additional
25 information I need by way of affidavit or otherwise.

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1 A Mm-hm.
 2 Q Did you say anything to any of your own children
 3 along the lines of, "Stay away from Jack. Avoid
 4 Jack"?
 5 A If I did, I don't remember that.
 6 Q After you became aware of the situation with Jack,
 7 did you do anything to limit the contact that Jack
 8 LoHolt had with any of your own children?
 9 A I don't know that there was any necessity of doing
 10 that.
 11 There would have been no reason for him to have
 12 contact with my children, but I would have, I think,
 13 if that helps.
 14 Q During the period that you were working with Jack to
 15 try and help him, did he continue to attend Sunday
 16 services?
 17 A I'm unsure about that. My best recollection is no.
 18 Q Did you exclude him?
 19 A No.
 20 Q Were you aware, when you found out about the
 21 situation with Jack, where Jack was residing?
 22 A Yes, I think so.
 23 Q And was he residing at the Allenbach compound?
 24 A A home on the property belonging to Herman Allenbach,
 25 a small home.

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1 Q Did you communicate what you knew about Jack's
 2 situation to Doc and Mrs. Allenbach?
 3 A I don't remember.
 4 Q Did you have any communication with either Doc or
 5 Vely Allenbach about Jack's and I'll refer to it as
 6 problem?
 7 A I'm hesitant because the answer might be "possibly,"
 8 but I don't remember that.
 9 Q Do you remember specifically informing any particular
 10 parents within the ward about Jack's problem?
 11 A Not beyond what I've told you.
 12 (Exhibit No. 2 marked for
 13 identification.)
 14 Q (By Mr. Kosnoff) Dr. Coleman, I have had marked as
 15 Coleman Exhibit No. 2 a multipage document that I
 16 would represent to you is the defendant corporation
 17 of the church in this case, their supplemental
 18 response to our first request for production of
 19 documents.
 20 The first four pages are the general responses,
 21 and then there are documents attached, and I've--
 22 although they were unnumbered, I went ahead and
 23 numbered them on my own, 5 through 24.
 24 Turning your attention to Pages 5 through 24, if

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1 you'd just take a moment to look those over and tell
 2 me what you believe those documents to be.
 3 MR. FREY: Counsel, while he's doing
 4 that, I just want to ask a question.
 5 Are you representing on the record that this is a
 6 complete copy of what was produced to you or have
 7 you--
 8 MR. KOSNOFF: Yes.
 9 MR. FREY: Have you gone ahead and left
 10 some of the pages out that were given?
 11 MR. KOSNOFF: Tom, I was given a copy of
 12 this document when it came in from your office. I
 13 saw it in electronic form. I thought it was the
 14 entire document.
 15 If there are additional pages, I don't have them.
 16 MR. FREY: You've started at 5. Is
 17 there a 1 through 4?
 18 MR. KOSNOFF: Yes, and it's your actual
 19 response, so I didn't number them 1 through 4 because
 20 they're already numbered.
 21 MR. FREY: Okay.
 22 Q (By Mr. Kosnoff) Dr. Coleman, is this some kind of
 23 regular historical record of positions, callings, and
 24 offices within the Kent 2nd Ward of the Renton Stake?
 25 A It appears to be.

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1 Q And it has some identifying information at the top of
 2 each page, including the president/bishop, the
 3 signature of the-- I assume that to be the ward
 4 clerk?
 5 A Possibly historical, but I believe this is the ward
 6 clerk.
 7 Q And then it indicates, "For the year ending December
 8 31," and then a blank allowing the person preparing
 9 the record to type in the calendar year that these
 10 entries reflect.
 11 A Right.
 12 Q Have you ever seen this document or a document like
 13 it before?
 14 A Looks like I've signed one.
 15 Q Does your name appear on one of these?
 16 A Yes, December 31st, 1973.
 17 Q Page 13, okay.
 18 A Page 9 as well, Page 11 and 12, and Page 13, and Page
 19 15.
 20 Q Just for clarification, Page 9, I don't see your name
 21 on Page 9.
 22 Is that under the "clerk"? Is that what you're
 23 referring to?
 24 A The Page 9 that I have, the "president/bishop" line
 25 at the top says, "Philip J. Coleman."

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1 A No.
 2 Q So I take it from that answer that Bishop Borland
 3 never advised you of any knowledge that he had
 4 regarding Jack's problems?
 5 A That's correct, as I remember it.
 6 Q Are you aware that Jack was sent to LDS Social
 7 Services for counseling around the sexual deviancy
 8 before you became aware of Jack's problem?
 9 A I was unaware of that.
 10 Q Have you since learned whether or not Jack had been
 11 sent to LDS Social Services surrounding his sexual
 12 deviancy problem?
 13 A I don't recall anything about that.
 14 Q Is that the kind of information you would have liked
 15 to have as bishop under the circumstances?
 16 A I'd have to say yes.
 17 Q Would that have affected the degree-- strike that.
 18 Would that have affected how serious you would
 19 have regarded Jack's exposure incident?
 20 A I would have to say probably.
 21 Q Is it possible it would have affected the course of
 22 actions you took had you known that information?
 23 A That word "possible" is surely open-ended, and I have
 24 to give that a yes.
 25 Q Do you think it would?

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1 Q (By Mr. Kosnoff) Well, let's go back to page--
 2 A That's me.
 3 Q Let's go to Page 14 first and establish some dates,
 4 and look at the August 19th entry.
 5 It indicates that on that date Randall Borland
 6 was released as bishop and Philip Coleman was
 7 sustained as bishop.
 8 Do you have any reason to believe that that's
 9 inaccurate?
 10 A I don't.
 11 Q So then turning the page to Page 16, the October 28th
 12 entry, it would seem that Jack LoHolt was sustained
 13 as the assistant Venture leader a couple of months
 14 after you were sustained as bishop, correct?
 15 A Looks that way to me.
 16 Q And to say that somebody was sustained, does that
 17 mean that the bishop called that person and then the
 18 membership sustained that person in that position?
 19 A In means at least a member of the bishopric called
 20 them, and that yes, the congregation would have
 21 sustained him.
 22 Q Do you have any recollection whether you made the
 23 decision to place Jack as the assistant Venture
 24 leader or whether one of your first or second
 25 counselors--

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1 A I would give it a "probably."
 2 Q Was Ken Keller the Scout master when you were bishop?
 3 A Ken Keller was a Scout master. I do not recall what
 4 period of time Ken was the Scout master.
 5 Q Do you have any recollection of talking to Ken Keller
 6 about Jack's problem?
 7 A I have no recollection of that.
 8 Q Do you have a recollection of speaking directly with
 9 any of the other Scout leaders within the ward's
 10 program regarding Jack's problem?
 11 A I not only don't recollect that, but I also don't
 12 recollect who the leaders were.
 13 Q The exhibit that we were looking at a moment ago,
 14 No. 2, at Page 16 has an entry of October 28th in
 15 which it indicates that Jack LoHolt was sustained on
 16 that date as assistant Venture leader.
 17 A Page 16, October--
 18 Q 28th.
 19 A I see it.
 20 Q Now, that would have been, I guess, a few months
 21 after you became bishop in August?
 22 MR. FREY: I am going to object to the
 23 form of the question.
 24 There's another bishop named on that document,
 25 Counsel.

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1 A Normally that would have been a first counselor call,
 2 but I surely don't recollect that.
 3 Q Why do you say normally that one would have been?
 4 A That's the 14- to 16-year-old group. The second
 5 counselor is assigned to the 12 to 13; first
 6 counselor, age 14, 15; and bishop, 16 to 18.
 7 Q So it was sort of the age-appropriate area of
 8 responsibility for one of the counselors and not the
 9 bishop?
 10 A That's correct.
 11 Q If you turn to Page 17, entry for May 15th, 1974--
 12 May 5th on Page 18 indicates that Jack was apparently
 13 released as assistant Venture advisor on that date,
 14 May 15th, 1974, and sustained to Scout master the
 15 same day.
 16 A Yes.
 17 Q Now, as Scout master would you have been, as bishop,
 18 the person that called him to that position?
 19 A Possibly. It might have been a counselor.
 20 Q Is it fair to say that had Jack's problem been known
 21 to you at or about May 15th, 1974, that you would not
 22 have called him to the position of Scout master?
 23 A Yes.
 24 Q If you would, turn to Page 19.
 Does that document reflect that on October 20th,